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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of)
)
Advanced Television Systems) MM Docket No. 87-268
and their Impact upon the)
Existing Television Broadcast)
Service)

**COMMENTS OF THE DEPARTMENT OF SPECIAL DISTRICTS,
SAN BERNARDINO COUNTY, CALIFORNIA, IN RESPONSE TO THE
SIXTH FURTHER NOTICE OF PROPOSED RULE MAKING**

To: The Commission.

The Department of Special Districts, San Bernardino County, California ("Special Districts"), by their counsel, here respectfully present Comments in the referenced proceeding, as invited by the Sixth Further Notice of Proposed Rule Making, 61 F. Reg. 43209, August 21, 1996 ("Sixth FN"). This marks Special Districts' first participation in this historic docket.

San Bernardino County, with an area of 20,062 square miles, is the largest county in the Continental United States. The county includes the principal part of the Mojave Desert. With a 1990 population of 1,418,380, the county also is among the less densely populated in the Nation.¹

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¹ For comparison, in 1990 San Bernardino had 70.7 persons per square mile; Orange County, California, 3,052.5; but Modoc County, in the isolated Sierra, only 2.5. All data from U.S. Department of Commerce, 1990 Census of Population and Housing, Summary Population and Housing Characteristics, California.

For decades, in rural areas of the county, local governments and the rural residents themselves have made their own arrangements for television delivery to communities that could not be reached by over-the-air service from Los Angeles, because of complete terrain blockage. In medium-sized communities, roughly in excess of 5,000 households, television delivery was effected by community antenna, or cable television. In other areas, where cable had not, or not yet proved economically viable, TV boosters and translators were employed.

Today Special Districts cooperates with local governing boards and local citizens in the operation of more than 40 TV translators and LPTV stations, as listed in Attachment A hereto. In general, these services are growing in popularity, adding new communities, and expanding their channel offerings from year to year. Low power television stations with locally originated program fare are in operation, for Barstow and for Morongo Valley, and an originating LPTV is planned for the Twentynine Palms area.

In the record of this docket since 1987, the Sixth FN marks the first instance where the Commission has expressly recognized the role of television translators and LPTV stations in the nation's ongoing system of television delivery. Special Districts welcomes this recognition, and hopes that the Commission will continue to craft its DTV implementation in a manner that takes full advantage of the flexibility of reduced-power facilities, and that keeps in place the vital services achieved through the use of such technology up to this point.

In the discussion that follows, we emphasize that Special Districts represents the viewers of more than 40 television broadcast channels, as described in Attachment A. But each licensed broadcast channel also has an associated input channel. In some instances, the input is obtained from a cable head-end or cable relay facility. In others, the input is obtained directly off the air, or by use of one or more point-to-point relays. Accordingly, any reconfiguration of primary TV service definitely will require Special Districts to revise both the input and output channel plan, for up to a total of as many as 90 location-plus-channel combinations. To the degree that Special Districts are asked to shoulder part of the necessary cost, and risk, associated with a major upgrade in the quality and flexibility of new TV broadcast services to the public, we can recognize and accept this responsibility. But to the extent that transition costs are the result of the Commission failing to consider fully all the operational impact of its plans, or failing to price the opportunity cost of certain policies for extrinsic reasons, a correction will be equitably required.

I. In the County Service Areas, "Full Replication" Is Unlikely to Occur.

The Sixth FN envisions the allotment of a second channel for each eligible full service TV station, on which the construction and operation of a new DTV facility will be authorized, up to power and other criteria that replicate the existing NTSC service, Sixth FN, ¶¶9-14. Channel 7 in Los Angeles will be awarded

Channel 53, and so on, with the end result (continuing the example) that twelve channels specifically allotted to Los Angeles become twelve channel pairs, a total of 24 channels. (This discussion ignores other channels licensed to other communities in the Los Angeles SCSA or actually carried on Special Districts translators).

It is safe to say that merely for purposes of the transition, Special Districts will not be constructing facilities to deliver a second channel for all of the licensed and authorized full service rebroadcasts set forth in Attachment A. The cost of doing so, in new TV translator and antenna equipment alone, would be prohibitive. Any such equipment purchased for transition purposes likely would need to be re-sold on a glutted equipment market when the transition is over.

To date the Commission's attention has been focused almost exclusively on the allotment of second channels, to assure that existing permittees and licensees are DTV-capable on that channel. The proposals have not analyzed the possibility that many licensees may be intent on doing as little as possible, consistent with their being able to warehouse their second channel. Further analysis, and possibly new rules will have to address required minimum power, minimum hours, and provisions for post-construction dark-authority. Special Districts will not be able prudently to make an investment in second-channel TV translators until such channels are actually seen to be activated, providing new broadcast service to the public.

No analysis has yet been attempted of the likely preclusionary effect of the new DTV channels proposed for allotment in the Los Angeles area. Generally speaking, Special Districts' facilities are too far distant, and too well shielded by intervening mountains, to expect any substantial new interference, created or suffered at the six locations currently in service. This optimistic first impression does not, however, lead us to replication. The facilities reflected in Attachment A were constructed over many years, with a careful design to minimize interference to other stations in the region, and mutual interference among the six tower locations involved. There is no realistic possibility that this rebroadcast service could be increased even by 25 per cent, let alone doubled.

II. The Core Spectrum Concept Requires Refinements

A. There is No Realistic Possibility That Channels 2 through 6 Will Be Recovered. The Commission May As Well Abandon This Plan at an Early Date.

The services provided by Special Districts were demanded by the rural residents themselves, and continue to be, in large measure to deliver (in addition to ABC, Channel 7): the CBS (Channel 2) and NBC (Channel 4) owned-and-operated stations, and the Warner Brothers (Channel 5), a legendary station that under previous owners won three of the first six national Emmy Awards ever presented, on January 25, 1949². These are among the most

² Michael and Parish, The Emmy Awards (Crown, 1970).

valuable and efficient broadcast franchises the world has ever known. The Commission's conclusion that the low-band VHF channels are ones "less suitable for broadcasting because of high levels of noise" (Sixth FN, ¶35) collides with 50 years of experience and suspends common sense. Special Districts, as a re-broadcaster at 100- to 120-miles distance, in mountainous terrain, of course has found these channels the most accessible of any. Their proposed replicants -- 48 for 2; 32 for 4; and 33 for 5 -- each would require E.R.P. levels in the several Megawatts to attain their intended average DTV power. In all probability such second facilities cannot be built safely as clones, on Mt. Wilson or anywhere, and would be built in fact as reduced facilities. Such reductions probably would necessitate Special Districts undertaking a complete re-design of its distant signal importation structure.

B. The Commission Should Not Re-allocate Channels 60 to 69 Until After the Transition to DTV is Completed.

The pressure on channel availability during the transition is bound to be expressed in this docket by translator and LPTV operators, and that is a concern shared by Special Districts. The pressure stems from a choice to pursue two, and only two goals, excluding all other priorities. Goal One was to create the narrowest possible DTV Core, with the maximum of contiguous spectrum recovery. Goal Two was to provide a one-for-one supplementary channel for each full service station or permit. The effect of these plans, taken together, is to virtually exhaust

any opportunity to serve other important objectives.

1. New service. Since July 17, 1987, the Commission has maintained a freeze on applications within 100 miles of any of 30 reference points in urban areas.³ Where new applicants have proposals pending that pre-date this situation, the Commission has been, at best, dilatory in devising a means for these applications to be finally granted or denied, in the wake of Bechtel v. FCC, 10 F. 3d 875 (D.C. Cir, 1993). The Commission has stopped entertaining new LPTV applications, having most recently relaxed its ongoing freeze only for modifications. While the Commission's decisions invariably pay lip service to "reliance on market forces" [Sixth FN, ¶13], the Agency appears to have forgotten completely that markets only work where there is an actual or potential source of new competition. In practice, the Commission appears to prefer the Statism of markets where the Government issues no new licenses, counting on some invisible hand, yet unspecified, to prevent stagnation, in the absence of new entrants.

In these circumstances, one would expect television station prices to have skyrocketed, as they have. Still, the Commission

³ Order, RM-5811 (Mimeo No. 4074, released July 17, 1987). This is described in the Sixth FN as a freeze on applications for "any new stations in 30 major markets," Sixth FN, ¶53. This reflects a gross misconception of the freeze. Because of the concentrations of population in the East, the industrial Mid-West and the West, the 30 reference points effectively bar applications, with few exceptions, throughout the top 150 markets, or roughly in those locations having 80 to 85 per cent of the total population.

here has made no provision for new entrants, until after the transition, and the recovery of second channels (assuming that will occur). By relaxing the spectrum recovery, however, through and including Channel 69, the Commission would be in position to announce new vacancies, to be allotted under existing or new, innovative licensing plans. If there are no new entrants, it will never be known whether the Commission was improvident in assuming that existing broadcasters were the ones most willing and able to construct DTV facilities. Given the chance to compete, it is at least possible that some new entrant would come in and stimulate competition, by actually competing. For this reason alone, Special Districts recommends that the spectrum not be reallocated, until after the transition is completed.

2. LPTV and translators. Throughout the Sixth FN (see ¶¶64-72) is language acknowledging that the present proposals will have major implications for existing LPTV and translator stations. (These stations also are the fastest growing segment of television broadcasting, though accommodation of their growth appears not to play a part in the Commission's present thinking.) The deeper problem is that the proposed Draft DTV Table of Allotments, Appendix B, was created by a computer program that was not designed to recognize the existence of LPTV or translators in any way. Over the years low power facilities were individually tailored to fit into those places that were the most free of other stations, and thus were least likely to cause or to receive destructive interference. So in practical effect, the

Commission's channel selection program, finding the same channels, could not have been more disruptive of low power facilities had that been its principal object.

The re-design of input and output channels, while perhaps tedious, and potentially expensive at isolated mountain-top locations, such as Special Districts' Pinto Mountain, should not be an insurmountable obstacle to the Commission's plans. But combined with the reallocation, especially the near-term reallocation of Channels 60 to 69, the plan does raise substantial difficulties. For example, the Special Districts' services include a total of ten translator stations with output channels from Channel 60 to Channel 69. The extinguishment of this band creates the need for ten new channels, in bands where the remaining Special Districts facilities are tightly packed. There probably is no way that existing service can be retained during the transition, without the use of Channels 60 to 69.⁴ For these reasons, Special Districts recommend that no frequencies be reallocated away from television broadcasting, until after the transition.

III. Recommendations to Assure Equitable Treatment for, and Minimize the Impact Upon TV Translator and LPTV Stations

Special Districts respectfully submit that the Commission

⁴ This discussion does not analyze the need for Special Districts to protect various new channels in the region, such as the new Barstow DTV 44, or new Palm Springs DTV 57 and DTV 43. It is assumed that new Los Angeles stations are at sufficient remove to present no insurmountable problems.

should build in certain basic safeguards for the existing TV translator and LPTV community, as follows:

1. Channel reversion, to the extent possible. The proposed Table was constructed in a manner to steer licensees who are currently outside the core to a core channel. Others, inside the core, were given an out-of-core channel, with the idea that their in-core channel would be retained in the long run. Special Districts recommends that, to the extent possible, the design should be modified to encourage all stations to revert to their existing channel after the transition. If, as is recommended here, the extinguishment of Channels 2 to 6 does not come to pass, such an approach is greatly simplified. Indeed, with the retention of these low-band channels, many opportunities are created for adding second channels on the first adjacency, instead of in the helter-skelter manner depicted by the draft Table.

2. Channel change as minor change. Currently, in cases where new interference is caused into or by a secondary translator or LPTV facility, the Commission has liberally granted Special Temporary Authorization to switch to another channel, pending authorization through major change application and publication on a proposed grant list with opportunity for petitions to deny. There is no need to perpetuate these formalities, in a secondary service, particularly given the strong record of non-interference by the LPTV/translator services. Channel changes should be made into a minor change, with FCC notification and a 30-day publication requirement (in Broadcast Applications). Applicants

would be required to certify that they had performed a channel availability study, prior to filing. Channel changes of course are not cost free, because they imply modified equipment and may require the installation of a new antenna. But flexibility to change and change again, as new services are implemented, would go far to alleviate the impact on these services generally.

3. Leave Translator DTV transition to the Market.

Translators and LPTV stations should be under no requirement to make a transition to DTV, either having to wait for some staged opening date, or having to change by a specified date at the end. Instead, as soon as a technical standard is adopted (if one is) pursuant to the Fifth Further Notice, Part 74 of the Rules should be amended to authorize any translator or LPTV station to operate in NTSC, DTV or in combination as it sees fit. In this way, some of the lack of new entry, built into the current proposal, might be mitigated through innovation undertaken by the translator and LPTV operators. Additionally, once a Report and Order is adopted, setting forth the new DTV Table, then the present freeze on LPTV and translator applications should be lifted, and new DTV translator and DTV LPTV applications should be entertained without limitations. Such applicants would need to demonstrate compliance with all required D/U separation criteria, and would be licensed on a secondary, non-interference basis.

Special Districts do not agree with the advocacy of some who would make LPTV a primary service. Rather, secondary status creates latitude for LPTV to take a leadership role in

experimentation, with no occasion for worries about new destructive interference. As operational experience is gained with DTV, and particularly with its properties at the outer edge of coverage, it is likely that TV translators will come to assume an important supplementary role, as they did after 1952 in assuring effectively nation-wide broadcast coverage. The Commission should take care here that it does not repeat the historic mistakes of 1954 -- 1960, when it ill advisedly sought to extinguish the rural boosters, instead of welcoming the promise they held of expanded service.

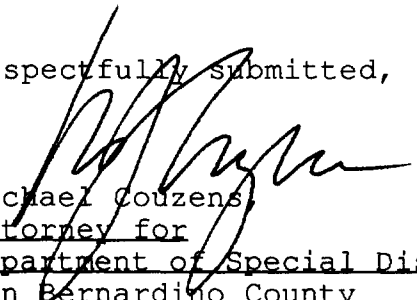
4. Compensation. Special Districts reserves its right, at the reply stage here, to comment on whether interference caused to it by new DTV service warrants some kind of compensation from the source of interference. Secondary status does not automatically resolve the issues of fairness in such exchanges, but Special Districts and the new DTV provider, we recognize, both are in the business of delivering public benefits.

What does seem clear at this point is that no spectrum reallocation, the purpose of which is to garner revenue for the U.S. Treasury, should result in any direct or indirect cost to Special Districts' taxpayer-created and taxpayer-financed services, without 100% restitution, paid by the U.S. Government, or by the successful bidder at auction or other new user. Special Districts claim a right to compensation for all facilities changes necessitated, directly or indirectly, by spectrum "recovery." Additionally, no new user should be permitted to oust an existing

Special Districts facility, without full compensation for a channel move, or other modification as may be required. If it is not possible to move channels or otherwise obtain full substitute service for Special Districts facilities, then the existing facilities should be permitted to continue to operate in their existing locations indefinitely.

In conclusion, Special Districts welcome the promise of DTV, and applaud the Commission and the staff in the determined effort that has been made to keep this complex project moving forward. As stated in these comments, we believe that there is room for substantial improvement in the approach taken, and hope that some of these suggestions can be incorporated.

Respectfully submitted,



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Attachment A.

County Service Area 70, Improvement Zone TV-2 Morongo Valley Television, serves the community of Morongo Valley within San Bernardino County, California.

<u>Morongo Valley Tower</u>		<u>Originating</u>		
<u>Call Signs</u>	<u>Local Channel</u>	<u>Program</u>	<u>Channel</u>	<u>Source</u>
K13WJ	13	UPN	13	Los Angeles
K14AB	14	FOX	11	Los Angeles
K16AA	16	CBS	2	Los Angeles
K32EM	32	A1 & Local		Local & Satellite
K34EU	34	Outdoor Channel		Satellite
K48EM	48	PBS	28	Los Angeles
K60AY	60	NBC	4	Los Angeles
K62AO	62	WB	5	Los Angeles
K64AU	64	ABC	27	Palm Springs
K67BH	67	KCAL	9	Los Angeles

County Service Area 70, Improvement Zone TV-5 Mesa Television, serves the communities of Copper Mesa, Desert Heights, Flamingo Heights, Landers, Yucca Mesa, Twentynine Palms and Wonder Valley within San Bernardino County, California.

<u>Pinto Mountain Tower</u>		<u>Originating</u>		
<u>Call Signs</u>	<u>Local Channel</u>	<u>Program</u>	<u>Channel</u>	<u>Source</u>
Proposed	14	UPN	13	Los Angeles
Proposed	18	A1 & Local		Local & Satellite
K49DC	49	FOX	11	Los Angeles
K51DU	51	PBS	28	Los Angeles
K54AI	54	NBC	4	Los Angeles
K63CG	63	WB	5	Los Angeles
K65AR	65	ABC	7	Los Angeles
K67AJ	67	CBS	2	Los Angeles

<u>Copper Mountain</u>		<u>Originating</u>		
<u>Call Signs</u>	<u>Local Channel</u>	<u>Program</u>	<u>Channel</u>	<u>Source</u>
K57EU	57	CBS	2	Los Angeles
K59BM	59	ABC	7	Los Angeles
K61BE	61	NBC	4	Los Angeles

County Service Area 40 Elephant Mountain Television, serves the communities of Barstow, Daggett, Hinkley, Lenwood, Newberry Springs and Yermo within San Bernardino County, California.

<u>Elephant Mountain Tower</u>		<u>Originating</u>		
<u>Call Signs</u>	<u>Local Channel</u>	<u>Program</u>	<u>Channel</u>	<u>Source</u>
K15BZ	15	CBS	2	Los Angeles
K17CN	17 & 6 on Cable	A1 & Local		Local & Satellite
K19BS	19	NBC	4	Los Angeles
K23BP	23	FOX	11	Los Angeles
K35BQ	35	WB	5	Los Angeles
K39DW	39	Univision		Satellite
K41CY	41	KCAL	9	Los Angeles
K44DV	44	PBS	28	Los Angeles
K61AE	61	ABC	7	Los Angeles
K67AZ	67	KHI	64	Victorville
K69FJ	69	UPN	13	Los Angeles

<u>Newberry Springs Tower</u>		<u>Originating</u>		
<u>Call Signs</u>	<u>Local Channel</u>	<u>Program</u>	<u>Channel</u>	<u>Source</u>
K03EK	3	KTLA	35	Elephant Mountain
K06IQ	6	FOX	23	Elephant Mountain
K08IA	8	ABC	61	Elephant Mountain
K10IX	10	CBS	15	Elephant Mountain
K12JI	12	NBC	19	Elephant Mountain

County Service Area 29, Lucerne Valley Television, serves the community of Lucerne Valley within San Bernardino County, California.

<u>Lucerne Valley Tower</u>		<u>Originating</u>		
<u>Call Signs</u>	<u>Local Channel</u>	<u>Program</u>	<u>Channel</u>	<u>Source</u>
K15CA	15	CBS	2	Los Angeles
K19BT	19	ABC	7	Los Angeles
K33DK	33	KHI	64	Victorville
K41CB	41	NBC	4	Los Angeles
K43EE	43	PBS	28	Los Angeles
K48AD	48	FOX	11	Los Angeles
K50EW	50	Local		Local & Satellite
K54AD	54	KCAL	9	Los Angeles
K68CW	68	UPN	13	Los Angeles